



3510-16-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Proposed collection; comment request; Fee Deficiency Submissions

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed collection, comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to comment on the proposed renewal of this information collection, as required by the Paperwork Reduction Act.

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted by any of the following methods:

- *Email:* InformationCollection@uspto.gov. Include "0070 Fee Deficiency Submissions" in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Marcie Lovett, Director, Records and Information Governance Division, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313– 1450; by telephone at 571-272-7728; or by email at *Raul.Tamayo@uspto.gov* with “Information Collection: 0070” in the subject line. Additional information about this collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The Leahy-Smith America Invents Act (“Act”) was enacted into law on September 16, 2011 (Pub. L. 112-29, 125 Stat. 283 (2011)). Under section 10(b) of the Act, eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

This information collection covers the submissions made by patent applicants and patentees to excuse fee payment errors that result from changes in their small or micro entity status, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

Applicants who change their entity status may need to submit additional payments in order to have their applications associated with the correct category. A small or micro entity can be established in good faith, and a patent applicant pay a maintenance fee as a small or micro entity in good faith but later discover that such status was established in error or that through errors USPTO was not notified of a loss of entitlement to such status. The USPTO will excuse the error if a deficiency payment and other requirements are submitted in compliance with 37 CFR 1.28(c) or 1.29(k). This is known as a “1.28(c) petition” or “1.29(k) petition.”

Thus, this information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., fee deficiency payment) in instances when the micro or small entity fee amount was paid in error. The USPTO requires the information in order to process and properly record a fee deficiency payment, and to avoid questions arising later, either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent. Failure to correct to the error in entity status will result in the charging of patent application fees that correspond with the correct entity status at the discretion of the Agency. If these fees are not paid, patent protection lapses and rights provided by the patent are no longer enforceable.

II. Method of Collection

The items in this collection may be submitted online using EFS-Web, the USPTO’s Web-based electronic filing system, or on paper by either mail or hand delivery.

III. Data

OMB Number: 0651–0070.

IC Instruments: There are no forms in this collection.

Type of Review: Renewal of a previously existing information collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions; individuals or households.

Estimated Number of Respondents: 2,500 responses per year. Of this total, the USPTO expects that 2,450 responses will be submitted electronically through EFS-Web and 50 will be submitted on paper.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 2 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

The time per response, estimated annual responses, and estimated annual hour burden associated with each instrument in this information collection is shown in the table below.

Estimated Total Annual Hour Burden: 5,000 hours.

Estimated Total Annual Cost Burden (Hourly): \$2,190,000.00. The USPTO expects that attorneys will complete the instruments associated with this information collection. The professional hourly rate used for the calculation is the \$438 average rate for attorneys in private firms as published in the 2017 Report of the Economic Survey by the American Intellectual Property Law Association (AIPLA). Using this hourly rate, the USPTO estimates \$2,190,000.00 per year for the total hourly costs associated with respondents.

IC Number	Information Collection Instrument	Estimated time for response (hours) (a)	Estimated Annual Responses (b)	Estimated annual burden hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
1	Submissions Under 37 CFR 1.28 (c)	2	1,875	3,750	\$438.00	\$1,642,500.00
2	Submissions Under 37 CFR 1.29 (k)	2	625	1,250	\$438.00	\$547,500.00
Total		---	2,500	5,000	---	\$2,190,000.00

Estimated Total Annual Cost Burden (Non-Hourly): \$335.00. There are no capital

startup, maintenance, or operating fees are associated with this collection. There are, however, postage costs associated with this collection. Specifically, customers may incur postage costs when submitting the information in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first class postage cost for a one-pound, priority mail submission will be \$6.70 and approximately 60 submissions will be submitted to the USPTO requiring postage.

IC Number	Information Collection Instrument	Responses (yr) (a)	Postage Costs (b)	Total non-hour cost burden (yr) (a) x (b) = (c)
1	Submissions Under 37 CFR 1.28 (c)	38	\$6.70	\$254.60
2	Submissions Under 37 CFR 1.29 (k)	12	\$6.70	\$80.40
Total		50	---	\$335.00

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs is \$335.00 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether

the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Marcie Lovett

Director, Records and Information Governance Division

Office of the Chief Technology Officer

USPTO

BILLING CODE 3510-16-P

[FR Doc. 2018-15612 Filed: 7/20/2018 8:45 am; Publication Date: 7/23/2018]